NASPO ValuePoint

PARTICIPATING ADDENDUM

THIRD PARTY LIABILITY SERVICES

Led by the State of Georgia

Master Agreement #: 99999-NVP-DCH0000120-0001

Contractor: Health Management Systems, Inc.

Participating Entity: STATE OF MINNESOTA

Minnesota Contact #: 258133

Minnesota T-Number: 25ATP

This Participating Addendum is between the State of Minnesota, acting through its Commissioner of Administration ("State" or "Participating Entity") and Health Management Systems, Inc, whose designated business address is 5615 High Point Drive, Irving, TX 75038 ("Contractor" or "HMS"). State and Contractor may be referred to jointly as the "Parties".

Participating Addendum Terms and Conditions:

1. **Term:** This Participating Addendum shall become effective as of the date of the last signature below and shall terminate on December 31, 2024, unless terminated sooner or otherwise amended in accordance with the terms set forth herein. Notwithstanding the previous, in no event shall the term of the Participating Addendum or any Work Order Contract exceed the term of the Master Agreement, as amended.
2. **Scope**: This Participating Addendum covers the Third-Party Liability Services Master Agreement led by the State of Georgia for use by state agencies and other entities located in the Participating State authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. All products and services listed on the Contractor page of the NASPO ValuePoint website may be purchased by Participating Entities.
3. **Participation:** This Participating Addendum covers participation of Participating Entity in the above-referenced Master Agreement between the State of Georgia and Contractor for Third Party Liability Services. This Participating Addendum may be used by all authorized state agencies and CPV Members as defined in Attachment A. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
4. **Primary Contacts:** The following (or their named successors) are the primary contact individuals for this Participating Addendum:

Contractor

Name:	John Oswald
Address:	5615 High Point Drive, Irving, TX 75038
Telephone:	402.301.1461
Fax:	N/A
Email:	John.Oswald@gainwelltechnologies.com

NASPO ValuePoint

PARTICIPATING ADDENDUM

THIRD PARTY LIABILITY SERVICES

Led by the State of Georgia

Participating Entity:

Name:	Mark Haselman
Address:	50 Sherburne Avenue, Suite 112, Sain Paul, MN 55155
Telephone:	651-201-3049
Fax:	N/A
Email:	mark.haselman@state.mn.us

5. **Definitions:**

CPV Members. The Cooperative Purchasing Venture (CPV) program was established by Minn. Stat. § 16C.03, subd. 10, which authorizes the commissioner of the Minnesota Department of Administration (Commissioner of Administration) through its Office of State Procurement (OSP) to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities" with one or more governmental units and other entities as described in Minn. Stat. § 471.59, subd. 1 and Minn. Stat. § 16C.03, subd. 10. Based on this authority, the Commissioner of Administration enters into a joint powers agreement that designates OSP as the authorized purchasing agent for the governmental unit or other entity. Governmental units and other entities joining the program are given an access code which identifies them as CPV members and permits them to access the OSP website to get information about commodities and/or services available on the State of Minnesota (State) contracts. Governmental units and other entities who are not members of the CPV program are not authorized to use the contract prices. The Contractor at its sole discretion may provide the contract to CPV members with same legal terms and conditions but the Work Order and pricing and other specifications are to be mutually agreed upon due to the nature of the Contractor's services. For additional information, visit the OSP website at https://mn.gov/admin/osp/other-purchasers/cpv/.

State Agencies. This term applies only to State agencies and departments, as defined in Minn. Stat. §§ 15.01 and 15.021.

Ordering Entity. This term applies to any State Agency or CPV Member placing an order under the Contract.

State and State of Minnesota. These two terms apply to the Minnesota Department of Administration, Office of State Procurement (OSP), representing the State of Minnesota as the contracting agency for the Contract.

Contract. Contract is defined as the Minnesota Contract Participating Addendum, which incorporates the terms of the NASPO Master Agreement.

Run-Out Period. In the event of a termination or upon expiration of the Participating Addendum or Master Agreement, Contractor shall be entitled to continue to invoice and be paid for recoveries for a period of 90 days after the effective date of the termination, or the expiration of the Participating Addendum, for work performed up to and including the effective date of termination or expiration.

6. **Modifications to the Master Agreement and Additional Terms and Conditions:** This Participating Addendum incorporates all terms and conditions of the Master Agreement as applied to the Participating Entity and Contractor, subject to the following limitations, modifications, and additions which are attached and incorporated in this Participating Addendum:

   Attachment A – Minnesota Terms and Conditions
   Attachment B – Insurance Terms
   Attachment C –Work Order Contract

   These modifications and/or additions apply only to actions and relationships with the Participating Entity and/or Purchasing Entities referenced under Paragraph 2 of this Participating Addendum.

7. **Work Order Contract**. A Work Order Contract specific to the Participating Entity's engagement shall be negotiated and executed by Contractor and Participating Entity as provided in the Master Agreement. A sample Work Order Contract is attached as Attachment C.

8. **Termination of this Participating Addendum:**

   A. **Immediate Termination**. The Participating Entity may terminate the Participating Addendum for any one or more of the following reasons effective immediately, absolutely, and without advance notice:

      i. In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Participating Addendum effective as of the date on which the license or certification is no longer in effect;

      ii. The Participating Entity determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

      iii. The Contractor fails to comply with confidentiality laws or provisions;

      iv. The Contractor furnished any statement, representation or certification in connection with the Master Agreement, Participating Addendum, or the bidding process which is materially false, deceptive, incorrect or incomplete;

v. The Participating Entity may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services addressed within this Contract. Termination must be by written notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that dedicated funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding. This notice will be provided within a reasonable time of the State's receiving notice.

B. **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the Participating Entity to declare the Contractor in default of its obligations under this Participating Addendum:

i. The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the Participating Entity's satisfaction, any material requirement or is in violation of a material provision, including, but without limitation, the express warranties made by the Contractor;

ii. The Participating Entity determines that satisfactory performance of the Participating Addendum is substantially endangered or that a default is likely to occur;

iii. The Contractor fails to make substantial and timely progress toward performance of the Participating Addendum;

iv. The Contractor (i) makes a general assignment for the benefit of creditors; (ii) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Participating Entity reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

v. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Participating Addendum;

vi. The Contractor has engaged in conduct that has exposed or may expose the Participating Entity to liability, as determined in the Participating Entity's sole reasonable discretion; or

vii. The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Participating Entity or a third party.

C. **Notice of Default.** If there is a default event caused by the Contractor, the Participating Entity shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Participating Entity's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the Participating Entity may:

i. Terminate the Participating Addendum with an additional thirty (30) days written notice to allow for wind down of services; and/or
ii. Procure substitute goods or services from another source and charge the difference in cost between the Participating Addendum and the substitute contract to the defaulting Contractor; and/or,
iii. Enforce the terms and conditions of the Participating Addendum and seek any legal or equitable remedies.

D. **Termination Upon Notice.** Following ninety (90) days' written notice, the Participating Entity may terminate the Participating Addendum without cause, in whole or in part, without the payment of any penalty or incurring any further obligation to the Contractor other than paying invoices submitted by Contractor during the Run-Out Period. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the Participating Addendum to the Participating Entity up to and including the date of termination but the Participating Entity will be subject to the Run Out Period as defined below and will be required to pay invoices from Contractor during the Run-Out Period.

E. **Payment Limitation in Event of Termination.** In the event of termination of the Participating Addendum for any reason by the Participating Entity, the Participating Entity shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Participating Addendum and for which the Participating Entity is obligated to pay pursuant to the Participating Addendum or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Participating Entity under the Participating Addendum in the event of termination. The Participating Entity shall not be liable for any costs incurred by the Contractor in its performance of the Participating Addendum, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Participating Addendum.

F. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Participating Entity, the Contractor shall:

i. Cease new work under the Participating Addendum and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within sixty (60) days of the date of notice of termination, describing the status of all work under the Participating Addendum, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Participating Entity may require;

ii. Except as necessary to close out performance of services and as necessary for the Run Out period, cease using and return to the Participating Entity, any personal property or materials, whether tangible or intangible, provided by the Participating Entity to the Contractor within 90 calendars days after the effective date of termination;

iii. Comply with the Participating Entity's instructions for the timely transfer of any active files and work product produced by the Contractor under the Participating Addendum;

iv. Cooperate in good faith with the Participating Entity, its employees, agents and contractors during the transition period between the notification of termination and the termination of the contract; and

v. Return to the Participating Entity within sixty (60) days any payments made for goods and services that were not delivered or rendered by the Contractor.

9. Orders: Any order placed by a Participating Entity or Ordering Entity for a product or service available from the Master Agreement must include the Minnesota Contract number on the PO or ordering document in order to be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement, as modified by this Contract or supplemented by an Ordering Document signed by the parties, unless the parties to the order agree in writing that another contract or agreement applies to such order. The Contract is not a purchase order, nor does it guarantee any purchases will be made.

A. In the event that any provision of Contractor's Ordering Document is contrary to Minnesota law; such provision shall be null and void. The terms of the Contract, the Master Agreement and duly executed Contractor's Ordering Documents shall be read as cumulative and complimentary to the extent possible, with direct conflicts resolved in favor of the Contract.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below.

1. HEALTH MANAGEMENT SYSTEMS, INC. (Contractor)
The Contractor certifies that the appropriate person(s) have executed the contract on behalf of the Contractor as required by applicable articles or bylaws.

Signed by:
By: Mark Knickrehm
9513761EE1E840A...

Title: President & CEO

Date: 10/1/2024

2. Department of Administration (STATE AGENCY)

DocuSigned by:
By:
03CE381D6C95402...
(with delegated authority)

Title: Chief Procurement Officer

Date: 10/1/2024

3. Commissioner of Administration
As delegated to the Office of State Procurement

DocuSigned by:
By: Rachel Dougherty
DD8CD649A70445F...
Date: 10/2/2024

93139

For questions regarding NASPO ValuePoint Participating Addendums, please contact the Cooperative Contract Coordinator team at info@naspovaluepoint.org.

Fully executed NASPO ValuePoint Participating Addendums must be submitted via email in PDF format to pa@naspovaluepoint.org.

Attachment A –Minnesota Terms and Conditions

1. **Representations and Warranties.**
   1.1 Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law the State is empowered to engage such assistance as deemed necessary.
   1.2 Contractor warrants that it is duly qualified and shall perform its obligations under this Contract in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor's industry, trade, or profession, and in accordance with the specifications set forth in this Contract, to the satisfaction of the State.
   1.3 Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms.
   1.4 Disclaimer of Warranty. Except for the foregoing warranties, the services are provided "as-is." The warranties expressly included herein are in lieu of, and Contractor expressly disclaims, all other warranties, express, implied or statutory, including without limitation, any warranty of merchantability, noninfringement, or fitness for a particular purpose, all of which are expressly waived by lead state and participating entities.

2. **Prompt Payment and Invoicing.**
   2.1 Prompt Payment. The State will pay the Contractor pursuant to Minn. Stat. § 16A.124, which requires payment within 30 days following receipt of an undisputed invoice, or merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." Notwithstanding the foregoing, the State may pay the Contractor in advance for purchases as allowed pursuant to Minn. Stat. §16A.065.

   The payment for each order will only be made for goods received or services actually performed that have been accepted by the ordering entity, and meet all terms, conditions, and specifications of the Contract and the ordering document.

   2.2 Retainage. Under Minn. Stat. § 16C.08, subd. 2 (10), no more than 90 percent of the amount due under an Order may be paid until the final product of the Work Order Contract has been reviewed by the State. The balance due will be paid when the State determines that the Contractor has satisfactorily fulfilled all the terms of this Contract and the Order.

3. **Assignment, Amendments, Waiver, and Contract Complete.**
   3.1 Assignment. The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors.
   3.2 Amendments. Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.
   3.3 Waiver. If either Party fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.
   3.4 Contract Complete. This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

4. **Force Majeure.**

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, fires, floods, quarantine restrictions, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or other catastrophes beyond the reasonable control of the party. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

5. **Indemnification.**
   5.1 In the performance of this Contract, Contractor must indemnify, save, and hold harmless the State, its agents, and employees, from any third-party claims or causes of action for personal injury, death or damage to real or tangible property, including reasonable attorney's fees incurred by the State, to the extent caused by Contractor's:
   - Intentional, willful, or negligent acts or omissions; or
   - Actions that give rise to strict liability; or
   - Breach of contract or warranty.

   The indemnification obligations of this section do not apply to the extent that the event the claim or cause of action is the result of the State's negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this Contract.

5.2 Nothing within this Contract, whether express or implied, shall be deemed to create an obligation on the part of the State to indemnify, defend, hold harmless or release the Indemnifying Party. This shall extend to all agreements related to the subject matter of this Contract, and to all terms subsequently added, without regard to order of precedence.

6. **Liability.** Contractor's sole and aggregate liability for any and all claims, losses, or liabilities arising out of or relating to this agreement, including but not limited to performance by Contractor pursuant to this agreement, will be limited to direct damages and will in no event exceed $15,000,000 USD. In no event will either party be liable for any indirect, special, consequential, incidental, exemplary or punitive damages, lost profits or anticipated savings.

7. **Governing Law, Jurisdiction, and Venue.**

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

8. **Subcontracting and Subcontract Payment.**
   - 8.1 Subcontracting Allowed. A subcontractor is a person or company that has been awarded a portion of the Contract by Contractor.
   - 8.2 Subcontractor Payment. Contractor must pay any subcontractor in accordance with Minn. Stat. § 16A.1245.

9. **Data Disclosure.**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

10. **Government Data Practices.**

The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

11. **Intellectual Property Rights.**

11.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

11.1.1 "Documents" are the originals of reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, exclusively for the State in the performance of this Contract.

11.1.2 "State Pre-Existing Intellectual Property" means all intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual Property.

11.1.3 "Contractor Pre-Existing Intellectual Property" means all Contractor intellectual property including analyses, tools, designs, database rights, processes and process flows, programs, software, materials, works of authorship, inventions (whether or not patentable), trade secrets, patents, trademarks, trade names, systems and documentation, analytical methodologies and algorithms, information management systems, associated proprietary forms of data organization, whether or not confidential, all enhancements, modifications, improvements or derivatives thereof, and all intellectual property and proprietary rights whether arising by operation of law, contract, license, or otherwise in and to the foregoing that is developed prior to or outside the scope of this Contract.

11.1.4 "Works" means all inventions, improvements, discoveries (whether or not patentable), reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors exclusively in the performance of this Contract. "Works" includes Documents.

11.2 Ownership. Excluding any Contractor Preexisting Intellectual Property, third-party intellectual property contained therein, the State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Documents created and paid for under this Contract. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Contractor within fifteen (15) days of completion or cancellation of this Contract and expiration of the Run-Out period. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." Except for Contractor Preexisting Intellectual Property incorporated therein, the Contractor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

11.3 Pre-existing Intellectual Property. Each Party shall retain ownership of its respective Pre-Existing Intellectual Property. The Contractor grants the State a perpetual, irrevocable, non-exclusive, royalty free license for Contractor's Pre-Existing Intellectual Property that are incorporated in the Works, Documents. or other defined deliverables, or services that are purchased through the Contract during the term of the Contract and thereafter solely for purposes of utilizing the Works delivered during the term of the Contract.

11.4 Obligations.

11.4.1 Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that excluding any Contractor Preexisting Intellectual Property or third-party intellectual property contained therein, neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Contractor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities.

11.4.2 Indemnification. Notwithstanding any other indemnification obligations addressed within this Contract, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. However, CONTRACTOR shall be relieved of this obligation and will not be liable to the extent claims of misappropriation or infringement arise from (i) CONTRACTOR's compliance with any designs, specifications or written instructions of the STATE (ii) the use of any Works and Documents in combination with any product, service or activity (or any part thereof) not furnished, performed or recommended in writing by CONTRACTOR; (ii) the use of a Works and Documents in violation of the Contract; or (iii) third party content supplied or transmitted by the STATE or any third party under its control or contract. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, reasonable attorney fees. If such a claim or action arises, or in the Contractor's opinion is likely to arise, the Contractor must, at the Contractor's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

.

12. **Contractor's Documents.**

Any licensing and maintenance agreement, or any order-specific agreement or document, including any pre-installation, linked or "click through" agreement that is allowed by, referenced within or incorporated within the Contract whenever the Contract is used for a State procurement, whether directly by the Contractor or through a Contractor's agent, subcontractor or reseller, is agreed to only to the extent the terms within any such agreement or document do not conflict with the Contract or applicable Minnesota or Federal law, and only to the extent that the terms do not modify, diminish or derogate the terms of the Contract or create an additional financial obligation to the State. Any such agreement or document must not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applicable to this Contract or afforded to the State by Minnesota law. A State employee's decision to choose "accept" or an equivalent option associated with a "click-through" agreement does not constitute the State's concurrence or acceptance of terms, if such terms are in conflict with this section.

13. **State Audits.**
Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, the State Auditor, or Legislative Auditor, as appropriate, for a minimum of six years from the expiration or termination of this Contract. For clarity, notwithstanding the above, neither the State nor its authorized agents may request to be provided access to or otherwise audit any information relating to records or minutes of internal management meetings of Contractor, confidential information relating to Contractor's employees, suppliers, or customers, information that is subject to legal professional privilege, information subject to exclusions or protection under applicable law.

14. **Usage Report.**
The Contractor is required to furnish usage data to the State's Authorized Representative on a quarterly basis based on the state fiscal year which begins on July 1. The quarter periods are July 1 to September 30 (1st Quarter), October 1 to December 31 (2nd Quarter), January 1 to March 31 (3rd Quarter), and April 1 to June 30 (4th Quarter). The report on the Contract usage must consist of the total dollars expended by both State Agencies and CPV members. Such report shall be in format required by the Master Agreement. Failure to provide these reports may result in Contract cancellation. The State may request additional periodic or ad-hoc reports as necessary upon 30 days' notice and no more than once annually.

15. **Diverse Spend Reporting.**
If the total value of any Work Order Contract may exceed $500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under the Contract, and 2) indirectly to diverse businesses that provide supplies/services to Contractor (in proportion to the revenue from the Work Order Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Contract is in effect.

16. **Publicity and Endorsement.**

16.1 Publicity. Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract. Notwithstanding the foregoing, the State authorizes Contractor to refer to this Participating Addendum and the services provided under executed Work Order Contracts in response to Requests for Proposals or related requests.

16.2 Endorsement. The Contractor must not claim that the State endorses its products or services.

17. **Debarment by State, its Departments, Commissions, Agencies, or Political Subdivisions.**

Contractor certifies that neither it nor its principals is presently debarred or suspended by the Federal government, the State, or any of the State's departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

18. **Federal Funds.**

18.1 Compliance with Federal Requirements. Federal money will be used or may potentially be used to pay for all or part of the goods, construction or services under the Contract. The Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

18.2 Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion. Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

19. **Contingency Fees Prohibited.**

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

20. **Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).**

If the value of this Contract, including all extensions, is $50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

21. **Non-discrimination (in accordance with Minn. Stat. § 181.59).**
The Contractor will comply with the provisions of Minn. Stat. § 181.59.

22. **E-Verify Certification (in accordance with Minn. Stat. § 16C.075).**
For services valued in excess of $50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

23. **Affirmative Action Requirements**
The State intends to carry out its responsibility for requiring affirmative action by its contractors.

23.1 Covered Contracts and Contractors. If the Contract exceeds $100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.

23.2 General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

23.3 Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

23.3.1 The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

23.3.2 The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

23.3.3 In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

23.3.4 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner, or applicable State agency in the State of employment. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

23.3.5 The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

23.4 Consequences. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

23.5 Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

24. **Equal Pay Certification.**

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the State may require Contractor to verify its exempt status.

25. **State's Rights and Remedies Cumulative.** All rights and remedies provided in the Contract are cumulative and not exclusive of any other rights or remedies that may be available to the State, whether provided by law, equity, statute or otherwise.

26. **Nonvisual Access Standards.**

Pursuant to Minn. Stat. § 16C.145, the Contractor must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

27. **Survival of Terms.**
The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices; Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; Usage Report; and Data Disclosure. Any other Contract term that expressly states or by its nature shall survive, shall survive.

Attachment B: Insurance Requirements

1. **Notice to Contractor.**
    1.1 The Contractor is required to submit Certificates of Insurance acceptable to the State as evidence of insurance coverage requirements prior to commencing work under this Contract.
    1.2 Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of this Contract, unless otherwise specified in this Contract
    1.3 The failure of the Contractor to provide a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the State to the Contractor to provide such insurance.
    1.4 The State reserves the right to immediately terminate this Contract if the Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's Authorized Representative upon written request.
2. **Notice to Insurer.**
    2.1 The Contractor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
    2.2 Insurance certificate holder should be addressed as follows:

    Department of Administration
    Office of State Procurement
    50 Sherburne Avenue
    St. Paul, MN 55155

3. **Additional Insurance Conditions. The following apply to the Contractor, or the Contractor's subcontractor:**
    3.1 Contractor's commercial general liability policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State with respect to any claim arising out of Contractor's performance under this Contract.
    3.2 If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State. If any insurance policy required herein and maintained by Contractor does not provide advance notice to third parties then, prior to any cancellation of such insurance, Contractor shall have new insurance policies in place that meet the requirements of this Contract;
    3.3 Contractor is responsible for payment of Contract related insurance premiums and deductibles;
    3.4 If Contractor is self-insured, a Certificate of Self-Insurance must be attached;

3.5 Contractor's policy(ies) except for Technology E&O and Professional Liability shall include legal defense fees in addition to its policy limits.
3.6 Contractor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best.
3.7 An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

4. **Coverages. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:**

4.1 **Commercial General Liability Insurance.** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance minimum limits are as follows:
$2,000,000 – per occurrence
$2,000,000 – annual aggregate
$2,000,000 – annual aggregate – applying to Products/Completed Operations

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- **State of Minnesota included as an Additional Insured**, to the extent permitted by law

4.2 **Commercial Automobile Liability Insurance.** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance minimum limits are as follows:
$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

Evidence of Subcontractor insurance shall be filed with the Contractor.

4.3 **Workers' Compensation Insurance.** Statutory Compensation Coverage. Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State, including Coverage B, Employer's Liability. Insurance **minimum** Employers Liability limits are as follows:
$100,000 – Bodily Injury by Disease per employee
$500,000 – Bodily Injury by Disease aggregate
$100,000 – Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State with a certificate of insurance.

4.4 **Professional Liability (Managed Care), Errors, and Omissions.** This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract. Insurance **minimum** limits are as follows:
$2,000,000 - per claim
$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor and unless the Contractor maintains an audited net worth of at least $100 million, the deductible may not exceed $50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by the Contractor to fulfill this request.

4.5 **Network Security and Privacy Liability Insurance/ Cyber Liability/Technology Errors & Omissions insurance (or equivalent).** The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Contractor shall maintain insurance to cover claims which may arise from failure of Contractor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:
$15,000,000 per claim / aggregate

The following coverage shall be included: State of Minnesota included as an Additional Insured unless the coverage is written under a Professional Liability policy.

Attachment C
Sample Work Order Contract

State of Minnesota

Professional and Technical Services

Work Order Contract

This Work Order Contract is between the State of Minnesota, acting through its Commissioner of ___________ ("State") and ___________ ("Contractor"). This Work Order Contract is issued under the authority of Participating Addendum T-Number ______, SWIFT Contract Number ______, and is subject to all provisions of the Participating Addendum which is incorporated by reference.

Contract

---

1. **Term of Contract**

   1.1 Effective date. _____, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not being work under this contract until this contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin work.

   1.2 Expiration date. _____, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

   1.3 Incorporation of Terms: This Work Order Contract is issued under the authority of the Minnesota Participating Addendum, SWIFT Contract Number XXXXXX, and is subject to all provisions of the Participating Addendum which is incorporated herein in its entirety, by reference, and is available from the Office of State Procurement.

2. **Scope of Work**

The Contractor shall perform all duties described in this Work Order Contract to the satisfaction of the State.

The Contractor, who is not a State employee, will:
____

3. **Consideration and Payment**

   3.1 Consideration. The State will pay for all services performed by the Contractor under this Work Order Contract as follows:

3.1.1 Compensation. The Contract will be paid _____.

3.1.2 Travel Expenses. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Work Order Contract will not exceed $_____.

3.1.3 Total Obligation. The total obligation of the State for all compensation and reimbursements to the Contractor under this Work Order Contract will not exceed $_____.

3.2 Invoices. The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the goods received or services actually performed, and the State's Authorized Representative accepts the invoiced goods or services. Invoices must be submitted timely and no more frequently than monthly.

4. **Project Managers**

The State's Project Manager is __________.The State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Project Manager is__________. If the Contractor's Project Manager changes at any time during this Work Order Contract, the Contractor must immediately notify the State.

5. **Diverse Spend Reporting.**

If the total value of this Work Order Contract may exceed $500,000, including all extension options, Contractor must track and report, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to subcontractors performing under this Work Order Contract, and 2) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Work Order Contract compared to Contractor's overall revenue). When this applies, Contractor will register in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as this Work Order Contract is in effect.

SIGNATURES AS REQUIRED BY THE STATE.